

QA 28087

DEPT. OF TRANSPORTATION
DOCKET SECTION

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BEFORE THE FEDERAL HIGHWAY ADMINISTRATION

UNITED STATES DEPARTMENT OF TRANSPORTATION

In the matter of:

Docket No. FHWA-97-2759 - 34

"ENGLISH LANGUAGE REQUIREMENT; QUALIFICATION OF DRIVERS"

Filed by:

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Clifford J. Harvison, President

October 27, 1997

3 pgs

Before the Administrator:

National Tank Truck Carriers, Inc. (NTTC) is a trade association the (approximately) 200 members of which specialize in the cargo tank transportation of hazardous materials, hazardous substances and hazardous wastes throughout the continental United States, Alaska and in international transportation. Since virtually all of our members are subject to the Federal Motor Vehicle Safety Regulations, issued by the Administrator, the interest of our membership in this matter is substantial. Given the context of this docket, we note that several NTTC members have either direct corporate relationships or indirect "partnerships" with tank truck carriers domiciled in both Mexico and Canada, our membership has experience in this area.

BASIC POSITIONS: On the one hand, NTTC supports and associates itself with the filing of the American Trucking Associations, Inc. in this matter. On the other hand, we urge the Administrator to review our comments and recommendations as they would apply to tank truck carriers involved in the domestic and international transportation of hazardous materials.

We are not asking the Administrator to develop two sets of rules; one for carriers of non-hazardous commodities and the other for transporters of hazardous materials. However, we do ask the FHWA to widen its scope of inquiry (and any subsequent Notice of Proposed Rulemaking) to include the concerns of "hazmat" carriers (particularly those transporting hazardous materials in bulk packagings).

ARGUMENT: There can be no doubting the Administrator's conclusion -- spelled out in the August 26, 1997 edition of the *Federal Register* -- that the relevant portions of 49 CFR need both revision and clarification. Like virtually every other element of the domestic economy, the tank truck industry has had to accommodate changes in the workplace and workforce which are reflective of our increasingly diverse population. However, our industry has not diluted long held and well established requirements for Commercial Motor Vehicle (CMV) drivers to have a practicable working knowledge of the English language. Frankly, regulatory developments (particularly at the Federal level) have compelled tank truck carriers to both interpret and enforce language requirements more stringently.

For tank truck carriers, drivers must be able to demonstrate English language communications skills in a number of areas. As "hazmat employees" they must receive training (written procedures, audio and visual media and verbal lectures) commonly communicated in the English language, and take "written tests". Importantly, much of this "driver training" while arranged by the carrier (i.e. "hazmat employer") is given by the shipper (or is dependent of materials provided by the shipper).

For instance, many shippers of bulk hazardous chemicals hold training sessions for tank truck drivers to instruct them on various hazardous properties of chemicals, requirements for accident reporting, recommended clean-up procedures, use of protective clothing, etc. In their role as trainers, these shippers are not under the jurisdiction of FHWA. Simply stated, the carrier employers are expected to provide drivers (for this training) who can communicate in English. Should the Administrator "lower the bar" in terms of English language skills, one can reasonably anticipate that the quality of such training will suffer.

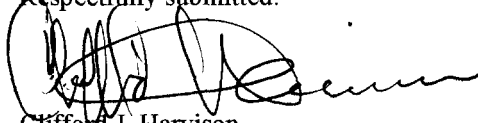
Yet another "hazmat oriented" consideration is created by Title 49's mandate that each shipment be accompanied by so-called "emergency response information". Usually, this mandate is met by the "in cab" presence of either RSPA's "Emergency Response Guidebook (ERG)" and/or "Material Safety Data Sheets" (documentation which is generally presented in a format specified (in part) by the Occupational Safety and Health Administration). While it is true that the name of a particular chemical compound might pose a communications barrier for the most fluent English speaker; it is equally true that this emergency response information also contains vital instructions in terms of "what to do..." in the event of fire, spill or leak of that product. In such cases, the "hazmat employee" must have the English

communications skills to both understand the "message" and communicate that message --in English -- to emergency response personnel present at an incident. In terms of a "hazmat" incident, limited English language communications skills may well endanger the lives of the driver, emergency response personnel and the public.

SUMMARY: In the near future, FHWA will create and publish for consideration and comment a specific Notice of Proposed Rulemaking. That Notice should be drafted in consideration of the fact that--for the reasons presented above--the need for a reasonable level of English language communications skills is greater today than it was when the regulations were drafted decades ago.

While NTTC agrees with the American Civil Liberties Union (ACLU) that the current rules may be subject to arbitrary enforcement, we respectfully suggest that the cure for this regulatory malady lies in better draftsmanship and more objective enforcement standards. As noted above, "lowering the bar" of ability and competence could well result in disastrous consequences.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Clifford J. Harvison", written over a horizontal line.

Clifford J. Harvison
President